

APPEAL NO. 032717
FILED NOVEMBER 20, 2003

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on September 17, 2003. The hearing officer determined that the average weekly wage (AWW) of appellant (claimant) was \$900.55 for the period from _____, through March 28, 2001, and \$1,270.25 for the period from March 29, 2001, through the date of the hearing. Claimant appealed the AWW determination contending that vacation pay paid to him after the 13-week period should be included in the AWW. Respondent (carrier) responded that there was no error in this regard.

DECISION

We affirm.

It is undisputed that claimant worked for the employer for at least 13 consecutive weeks immediately preceding his injury on _____. Claimant contends that, during the 13-week period, claimant became entitled to payments for his accrued vacation time from the previous year and that he made application in February 2000 to receive that payment. However, claimant did not take the vacation time in dispute during the 13-week period and he did not receive the payment during the 13-week period. Claimant said that the amounts in dispute concern payments for vacation time he was "cashing in" rather than vacation time he had taken. Claimant notes that there was an element of chance regarding whether the payment would be received during the 13-week period and argues that there should be a balancing of the equities and it should be included in the AWW.

We conclude that the hearing officer did not err. The Appeals Panel has addressed a similar assertion in prior cases. Texas Workers' Compensation Commission Appeal No. 000487, decided April 24, 2000; Texas Workers' Compensation Commission Appeal No. 952194, decided February 12, 1996. Because it does not appear that claimant took the related vacation time during the 13-week period, we perceive no error in the hearing officer's determinations in this regard. Appeal No. 952194, *supra*.

We have reviewed the complained-of determination and conclude that the hearing officer did not err. The hearing officer reviewed the record and decided what facts were established. We conclude that the hearing officer's AWW determination and determination with regard to claimant's accrued vacation time is supported by the record and is not so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

We affirm the hearing officer's decision and order.

According to information provided by carrier, the true corporate name of the insurance carrier is **LIBERTY MUTUAL FIRE INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**CT CORPORATION
350 NORTH ST. PAUL, SUITE 2900
DALLAS, TEXAS 75201.**

Judy L. S. Barnes
Appeals Judge

CONCUR:

Gary L. Kilgore
Appeals Judge

Robert W. Potts
Appeals Judge